

AMENDED IN ASSEMBLY MAY 15, 2014

AMENDED IN ASSEMBLY MARCH 27, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2466

Introduced by Assembly Member Nestande
(Coauthors: Assembly Members Harkey, Jones, Patterson, and
Wilk)

(Coauthors: Senators Berryhill, Gaines, Huff, and Vidak)

February 21, 2014

An act to amend ~~Section~~ *Sections 17941 and 23153* of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL’S DIGEST

AB 2466, as amended, Nestande. Minimum-~~annual~~ *franchise tax: annual tax: exemption: veterans small businesses.*

Existing law imposes an annual minimum franchise tax, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state. Existing law exempts a corporation that incorporates or qualifies to do business in this state from the payment of the minimum franchise tax in its first taxable year.

Existing law imposes an annual tax in an amount equal to the minimum franchise tax on every limited liability company doing business in this state. In addition, existing law requires every limited liability company if the articles of organization have been accepted by, or a certificate of registration has been issued by, the Secretary of State to pay an annual tax in an amount equal to the minimum franchise tax.

~~Existing law generally imposes an annual minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and on every limited partnership, limited liability partnership, and limited liability company registered, qualified to transact business, or doing business in this state, as specified. Existing law provides an exemption from that tax to a corporation for its first taxable year.~~

This bill would, for taxable years beginning on or after January 1, 2015, and before January 1, 2018, reduce that minimum tax, as provided, ~~franchise tax~~ for a corporation, ~~limited partnership, limited liability partnership,~~ and ~~that annual tax for a~~ limited liability company, ~~as provided,~~ that is a new veteran-owned small business, as defined, and would eliminate the tax if the business operates at a loss or ceases operation.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17941 of the Revenue and Taxation Code
2 is amended to read:

3 17941. (a) For each taxable year beginning on or after January
4 1, 1997, a limited liability company doing business in this state
5 (as defined in Section 23101) shall pay annually to this state a tax
6 for the privilege of doing business in this state in an amount equal
7 to the applicable amount specified in *paragraph (1)* of subdivision
8 (d) of Section 23153 for the taxable year.

9 (b) (1) In addition to any limited liability company that is doing
10 business in this state and is therefore subject to the tax imposed
11 by subdivision (a), for each taxable year beginning on or after
12 January 1, 1997, a limited liability company shall pay annually
13 the tax prescribed in subdivision (a) if articles of organization have
14 been accepted, or a certificate of registration has been issued, by
15 the office of the Secretary of State. The tax shall be paid for each
16 taxable year, or part thereof, until a certificate of cancellation of
17 registration or of articles of organization is filed on behalf of the
18 limited liability company with the office of the Secretary of State.

1 (2) If a taxpayer files a return with the Franchise Tax Board that
2 is designated as its final return, the Franchise Tax Board shall
3 notify the taxpayer that the annual tax shall continue to be due
4 annually until a certificate of dissolution is filed with the Secretary
5 of State pursuant to Section 17707.08 of the Corporations Code
6 or a certificate of cancellation is filed with the Secretary of State
7 pursuant to Section 17708.06 of the Corporations Code.

8 (c) The tax assessed under this section shall be due and payable
9 on or before the 15th day of the fourth month of the taxable year.

10 (d) For purposes of this section, “limited liability company”
11 means an organization, other than a limited liability company that
12 is exempt from the tax and fees imposed under this chapter
13 pursuant to Section 23701h or Section 23701x, that is formed by
14 one or more persons under the law of this state, any other country,
15 or any other state, as a “limited liability company” and that is not
16 taxable as a corporation for California tax purposes.

17 (e) Notwithstanding anything in this section to the contrary, if
18 the office of the Secretary of State files a certificate of cancellation
19 pursuant to Section 17707.02 of the Corporations Code for any
20 limited liability company, then paragraph (1) of subdivision (f) of
21 Section 23153 shall apply to that limited liability company as if
22 the limited liability company were properly treated as a corporation
23 for that limited purpose only, and paragraph (2) of subdivision (f)
24 of Section 23153 shall not apply. Nothing in this subdivision
25 entitles a limited liability company to receive a reimbursement for
26 any annual taxes or fees already paid.

27 (f) (1) Notwithstanding any provision of this section to the
28 contrary, a limited liability company that is a small business solely
29 owned by a deployed member of the United States Armed Forces
30 shall not be subject to the tax imposed under this section for any
31 taxable year the owner is deployed and the limited liability
32 company operates at a loss or ceases operation.

33 (2) The Franchise Tax Board may promulgate regulations as
34 necessary or appropriate to carry out the purposes of this
35 subdivision, including a definition for “ceases operation.”

36 (3) For the purposes of this subdivision, all of the following
37 definitions apply:

38 (A) “Deployed” means being called to active duty or active
39 service during a period when a Presidential Executive order

1 specifies that the United States is engaged in combat or homeland
2 defense. “Deployed” does not include either of the following:

- 3 (i) Temporary duty for the sole purpose of training or processing.
- 4 (ii) A permanent change of station.

5 (B) “Operates at a loss” means a limited liability company’s
6 expenses exceed its receipts.

7 (C) “Small business” means a limited liability company with
8 total income from all sources derived from, or attributable, to the
9 state of two hundred fifty thousand dollars (\$250,000) or less.

10 (4) This subdivision shall become inoperative for taxable years
11 beginning on or after January 1, 2018.

12 *(g) (1) Notwithstanding subdivision (a) or (b), for taxable years*
13 *beginning on or after January 1, 2015, and before January 1,*
14 *2018, a limited liability company that is a new veteran-owned*
15 *small business shall pay annually to the state a tax of ninety-nine*
16 *dollars (\$99) for those taxable years.*

17 *(2) Notwithstanding subdivisions (a) and (b) and paragraph*
18 *(1), for taxable years beginning on or after January 1, 2015, and*
19 *before January 1, 2018, a limited liability company that is a new*
20 *veteran-owned small business shall not be subject to the tax*
21 *imposed by this section for a taxable year that the business*
22 *operates at a loss or ceases operation.*

23 *(3) For purposes of this subdivision:*

24 *(A) “New veteran-owned small business” means a*
25 *veteran-owned limited liability company that is formed under the*
26 *laws of this state or has qualified to transact intrastate business*
27 *in this state on or after January 1, 2015, that begins business*
28 *operations at or after the time of its formation, and that has a total*
29 *income derived from, or attributable to, the state of two hundred*
30 *fifty thousand dollars (\$250,000) or less. “New veteran-owned*
31 *small business” does not include any limited liability company*
32 *that began business operations as a sole proprietorship, a*
33 *partnership, a corporation, or any other form of business entity*
34 *prior to its formation. This subdivision shall not apply to any*
35 *limited liability company that reorganizes solely for the purpose*
36 *of reducing its tax imposed under this section.*

37 *(B) “Operates at a loss” means a limited liability company’s*
38 *expenses exceed its receipts.*

39 *(C) “Veteran” means an individual honorably discharged from*
40 *the Armed Forces of the United States.*

1 (D) “Veteran-owned limited liability company” means a limited
2 liability company in which more than 50 percent of the membership
3 interest is owned by one or more veterans.

4 ~~SECTION 1.~~

5 SEC. 2. Section 23153 of the Revenue and Taxation Code is
6 amended to read:

7 23153. (a) Every corporation described in subdivision (b) shall
8 be subject to the minimum franchise tax specified in subdivision
9 (d) from the earlier of the date of incorporation, qualification, or
10 commencing to do business within this state, until the effective
11 date of dissolution or withdrawal as provided in Section 23331 or,
12 if later, the date the corporation ceases to do business within the
13 limits of this state.

14 (b) Unless expressly exempted by this part or the California
15 Constitution, subdivision (a) shall apply to each of the following:

16 (1) Every corporation that is incorporated under the laws of this
17 state.

18 (2) Every corporation that is qualified to transact intrastate
19 business in this state pursuant to Chapter 21 (commencing with
20 Section 2100) of Division 1 of Title 1 of the Corporations Code.

21 (3) Every corporation that is doing business in this state.

22 (c) The following entities are not subject to the minimum
23 franchise tax specified in this section:

24 (1) Credit unions.

25 (2) Nonprofit cooperative associations organized pursuant to
26 Chapter 1 (commencing with Section 54001) of Division 20 of the
27 Food and Agricultural Code that have been issued the certificate
28 of the board of supervisors prepared pursuant to Section 54042 of
29 the Food and Agricultural Code. The association shall be exempt
30 from the minimum franchise tax for five consecutive taxable years,
31 commencing with the first taxable year for which the certificate
32 is issued pursuant to subdivision (b) of Section 54042 of the Food
33 and Agricultural Code. This paragraph only applies to nonprofit
34 cooperative associations organized on or after January 1, 1994.

35 (d) (1) Except as provided in paragraph (2), paragraph (1) of
36 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
37 of Section 23181, and paragraph (1) of subdivision (c) of Section
38 23183, corporations subject to the minimum franchise tax shall
39 pay annually to the state a minimum franchise tax of eight hundred
40 dollars (\$800).

1 (2) The minimum franchise tax shall be twenty-five dollars
2 (\$25) for each of the following:

3 (A) A corporation formed under the laws of this state whose
4 principal business when formed was gold mining, which is inactive
5 and has not done business within the limits of the state since 1950.

6 (B) A corporation formed under the laws of this state whose
7 principal business when formed was quicksilver mining, which is
8 inactive and has not done business within the limits of the state
9 since 1971, or has been inactive for a period of 24 consecutive
10 months or more.

11 (3) For purposes of paragraph (2), a corporation shall not be
12 considered to have done business if it engages in business other
13 than mining.

14 (e) Notwithstanding subdivision (a), for taxable years beginning
15 on or after January 1, 1999, and before January 1, 2000, every
16 “qualified new corporation” shall pay annually to the state a
17 minimum franchise tax of five hundred dollars (\$500) for the
18 second taxable year. This subdivision shall apply to any corporation
19 that is a qualified new corporation and is incorporated on or after
20 January 1, 1999, and before January 1, 2000.

21 (1) The determination of the gross receipts of a corporation, for
22 purposes of this subdivision, shall be made by including the gross
23 receipts of each member of the commonly controlled group, as
24 defined in Section 25105, of which the corporation is a member.

25 (2) “Gross receipts, less returns and allowances reportable to
26 this state,” means the sum of the gross receipts from the production
27 of business income, as defined in subdivision (a) of Section 25120,
28 and the gross receipts from the production of nonbusiness income,
29 as defined in subdivision (d) of Section 25120.

30 (3) “Qualified new corporation” means a corporation that is
31 incorporated under the laws of this state or has qualified to transact
32 intrastate business in this state, that begins business operations at
33 or after the time of its incorporation and that reasonably estimates
34 that it will have gross receipts, less returns and allowances,
35 reportable to this state for the taxable year of one million dollars
36 (\$1,000,000) or less. “Qualified new corporation” does not include
37 any corporation that began business operations as a sole
38 proprietorship, a partnership, or any other form of business entity
39 prior to its incorporation. This subdivision shall not apply to any

1 corporation that reorganizes solely for the purpose of reducing its
2 minimum franchise tax.

3 (4) This subdivision shall not apply to limited partnerships, as
4 defined in Section 17935, limited liability companies, as defined
5 in Section 17941, limited liability partnerships, as described in
6 Section 17948, charitable corporations, as described in Section
7 23703, regulated investment companies, as defined in Section 851
8 of the Internal Revenue Code, real estate investment trusts, as
9 defined in Section 856 of the Internal Revenue Code, real estate
10 mortgage investment conduits, as defined in Section 860D of the
11 Internal Revenue Code, qualified Subchapter S subsidiaries, as
12 defined in Section 1361(b)(3) of the Internal Revenue Code, or to
13 the formation of any subsidiary corporation, to the extent
14 applicable.

15 (5) For any taxable year beginning on or after January 1, 1999,
16 and before January 1, 2000, if a corporation has qualified to pay
17 five hundred dollars (\$500) for the second taxable year under this
18 subdivision, but in its second taxable year, the corporation's gross
19 receipts, as determined under paragraphs (1) and (2), exceed one
20 million dollars (\$1,000,000), an additional tax in the amount equal
21 to three hundred dollars (\$300) for the second taxable year shall
22 be due and payable by the corporation on the due date of its return,
23 without regard to extension, for that year.

24 (f) (1) Notwithstanding subdivision (a), every corporation that
25 incorporates or qualifies to do business in this state on or after
26 January 1, 2000, shall not be subject to the minimum franchise tax
27 for its first taxable year.

28 (2) This subdivision shall not apply to limited partnerships, as
29 defined in Section 17935, limited liability companies, as defined
30 in Section 17941, limited liability partnerships, as described in
31 Section 17948, charitable corporations, as described in Section
32 23703, regulated investment companies, as defined in Section 851
33 of the Internal Revenue Code, real estate investment trusts, as
34 defined in Section 856 of the Internal Revenue Code, real estate
35 mortgage investment conduits, as defined in Section 860D of the
36 Internal Revenue Code, and qualified Subchapter S subsidiaries,
37 as defined in Section 1361(b)(3) of the Internal Revenue Code, to
38 the extent applicable.

1 (3) This subdivision shall not apply to any corporation that
2 reorganizes solely for the purpose of avoiding payment of its
3 minimum franchise tax.

4 (g) Notwithstanding subdivision (a), a domestic corporation, as
5 defined in Section 167 of the Corporations Code, that files a
6 certificate of dissolution in the office of the Secretary of State
7 pursuant to subdivision (b) of Section 1905 of the Corporations
8 Code, prior to its amendment by the act amending this subdivision,
9 and that does not thereafter do business shall not be subject to the
10 minimum franchise tax for taxable years beginning on or after the
11 date of that filing.

12 (h) The minimum franchise tax imposed by paragraph (1) of
13 subdivision (d) shall not be increased by the Legislature by more
14 than 10 percent during any calendar year.

15 (i) (1) Notwithstanding subdivision (a), a corporation that is a
16 small business solely owned by a deployed member of the United
17 States Armed Forces shall not be subject to the minimum franchise
18 tax for any taxable year the owner is deployed and the corporation
19 operates at a loss or ceases operation.

20 (2) The Franchise Tax Board may promulgate regulations as
21 necessary or appropriate to carry out the purposes of this
22 subdivision, including a definition for “ceases operation.”

23 (3) For the purposes of this subdivision, all of the following
24 definitions apply:

25 (A) “Deployed” means being called to active duty or active
26 service during a period when a Presidential Executive order
27 specifies that the United States is engaged in combat or homeland
28 defense. “Deployed” does not include either of the following:

29 (i) Temporary duty for the sole purpose of training or processing.
30 (ii) A permanent change of station.

31 (B) “Operates at a loss” means negative net income as defined
32 in Section 24341.

33 (C) “Small business” means a corporation with total income
34 from all sources derived from, or attributable, to the state of two
35 hundred fifty thousand dollars (\$250,000) or less.

36 (4) This subdivision shall become inoperative for taxable years
37 beginning on or after January 1, 2018.

38 (j) (1) Notwithstanding subdivision (a) and subject to
39 subdivision (f), for taxable years beginning on or after January 1,
40 2015, and before January 1, 2018, a corporation that is a new

1 veteran-owned small business shall pay annually to the state a
2 minimum franchise tax of ninety-nine dollars (\$99) for those
3 taxable years.

4 (2) Notwithstanding paragraph (1), for taxable years beginning
5 on or after January 1, 2015, and before January 1, 2018, a
6 corporation that is a new veteran-owned small business shall not
7 be subject to the minimum franchise tax for a taxable year that the
8 business operates at a loss or ceases operation.

9 (3) For purposes of this subdivision:

10 (A) "New veteran-owned small business" means a
11 veteran-owned corporation that is incorporated under the laws of
12 this state or has qualified to transact intrastate business in this state
13 on or after January 1, 2015, that begins business operations at or
14 after the time of its incorporation, and that has a total income
15 derived from, or attributable to, the state of two hundred fifty
16 thousand dollars (\$250,000) or less. "New veteran-owned small
17 business" does not include any corporation that began business
18 operations as a sole proprietorship, a partnership, or any other form
19 of business entity prior to its incorporation. This subdivision shall
20 not apply to any corporation that reorganizes solely for the purpose
21 of reducing its minimum franchise tax.

22 (B) "Operates at a loss" means negative net income as defined
23 in Section 24341.

24 (C) "Veteran" means an individual honorably discharged from
25 the Armed Forces of the United States.

26 (D) "Veteran-owned corporation" means a corporation in which
27 stock representing more than 50 percent of the voting power of
28 the corporation and representing more than 50 percent value of
29 the stock of the corporation is owned by one or more veterans.

30 (4) *This subdivision shall not apply to limited partnerships, as*
31 *defined in Section 17935 and limited liability partnerships, as*
32 *described in Section 17948.*

33 ~~SEC. 2.~~

34 SEC. 3. This act provides for a tax levy within the meaning
35 of Article IV of the Constitution and shall go into immediate effect.